LIBRARY
SUPREME COURT U. S.

FILED
MAR 25 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1331

DONALD C. SIMMONS, *Petitioner,*

v.

JOHN J. BUDDS, Et Al., *Respondents*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

JOHN G. HILL, JR.
Assistant Attorney General

University of Connecticut
Gulley Hall
Storrs, Connecticut 06268
(203-486-4241)

Attorney for Respondents

TABLE OF CONTENTS

Page

FACTS 1

QUESTIONS PRESENTED 2

ARGUMENT 2

CONCLUSION 4

CASES CITED

Page

Gutowski v. New Britain, 164 Conn. (34 Conn. L.J., No. 49, pp. 1, 2) 2

Paynter v. New York University, No. 594 Feb. Term 1971 (App. Div. April 2, 1971), reversing, Index No. SC 6820-1970 (N.Y. Civ. Ct. Sm. Claims Oct. 14, 1970) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO._____

DONALD C. SIMMONS, *Petitioner*

v.

JOHN J. BUDDS, Et Al., *Respondents*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

FACTS

The petitioner, under the questionable heading of "Statement" in his brief, presents a superficial litany of "facts" to this Court. We shall not take up the time of the Court in pointing out the innumerable points at which this recitation departs from the reality of the facts found and affirmed by the lower courts. Rather, we refer the Court to the decision of the Supreme Court of Connecticut printed as Appendix A to petitioner's brief.

The petitioner is a tenured associate professor who teaches at the Hartford Branch of the University of Connecticut. The respondents are various officers and officials of the University.

The University Senate is the governing body of the University which has authority over courses, curricula, and grading. On May 8, 1970, the Senate held a special meeting at which a majority in excess of two-thirds of the members present voted to change the customary grading for that school semester. The

essence of this change was that a student passing a course as of May 5, 1970 could omit taking the final examination in the course and receive a course grade of "S."

The petitioner has refused to accept this procedure and has brought this action seeking to enjoin the University from implementing it as far as students taking his courses are concerned.

QUESTIONS PRESENTED

1. WAS THE ACTION OF THE UNIVERSITY SENATE TAKEN IN ACCORDANCE WITH ITS OWN RULES?

2. DID THE ACTION OF THE UNIVERSITY VIOLATE ANY COGNIZABLE CONSTITUTIONAL RIGHT?

ARGUMENT

1. Was the Action of the University Senate Taken in Accordance with its Own Rules?

As the decision of the Connecticut Supreme Court states, authority for establishing and maintaining the grading system for the University lies with the University Senate. In the exercise of its expertise, the University Senate has authority to establish any grading system it deems appropriate, subject, of course, to revocation by positive action of the Board of Trustees. In the absence of such revocation of authority, the action stands.

The trial court found as a fact that the Spring 1970 grading system was legally enacted by a two-thirds majority of the faculty. This determination was based upon ample evidence and, accordingly, must stand. As the Connecticut Supreme Court stated:

> We will not find error in the trial court's conclusions that the grading changes were adopted by the requisite majority under its delegated authority unless it is "legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." *Gutowski v. New Britain*, 164 Conn. (34 Conn. L.J., No. 49, pp. 1, 2). Neither circumstance exists here.

2. Did the Action of the University Violate any Cognizable Constitutional Right?

In his brief, the petitioner frames five questions for review. While these questions appear in a superficially legal framework, they are, in fact, a reassertion of the allegations he failed to establish in the trial court. It is our understanding that the United States Supreme Court reviews the law and does not disturb factual determinations made upon the presentation of adequate evidence. We followed this approach before the Connecticut Supreme Court and were upheld. There is, in fact, no constitutional issue presented in this case. A review of the petitioner's reasons for granting the writ demonstrates that the gravamen of his complaint is a profound pedagogical difference of opinion with the action of the University Senate. This Court is not the proper forum for such a debate.

It is our contention that the central issue of this case is not the wisdom of the action taken by the University Senate. The merits of that decision are, of course, subject to debate; and the petitioner is entitled to criticize on a philosophical or pedagogical basis. It must be emphasized, however, that his grievance is really a disagreement with a policy decision of his faculty colleagues. Petitioner's fatal myopia is the confusion of his opinion of good pedagogy with the proper authority of the University Senate. Whether or not the action of the University Senate on May 8, 1970 was well-conceived educationally is argumentative and irrelevant to this case; the issue is — was it legal?

The Connecticut Supreme Court recognized the motivation behind this litigation and wisely found that the University Senate acted honestly within the scope of its delegated authority.

Petitioner's final allegation is that the action of the University Senate was arbitrary and capricious. The Connecticut Supreme Court rejected this, finding, in fact, that under the conditions prevailing in May of 1970, the action of the Senate could not be challenged. In this connection, the respondents point out that the University of Connecticut was hardly alone in having to make very difficult decisions in May of 1970. While the University remained open, held classes, and provided for optional examinations, other institutions were not so ably administered. New York University, for instance, among many others, canceled classes for the final nineteen days of the se-

mester. One of the students sued the University and was awarded a tuition refund of $277.40. This decision was reversed on appeal where the Court ruled.

> . . . In the light of the events on the defendant's campus and in college communities throughout the country on May 4th to 5th, 1970, the court erred in substituting its judgment for that of the University administrators and in concluding that the University was unjustified in suspending classes for the time remaining in the school year prior to the examination period . . . *Paynter v. New York University*, No. 594 Feb. Term 1971 (App. Div. April 2, 1971), reversing, Index No. SC 6820-1970 (N.Y. Civ. Ct. Sm. Claims Oct. 14, 1970).

CONCLUSION

The underlying philosophy of judicial restraint expressed in the *Paynter* case is commended to this Court as a guideline for decision.

THE UNIVERSITY OF CONNECTICUT

ROBERT K. KILLIAN
Attorney General

By: JOHN G. HILL, JR.
Assistant Attorney General